

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LISA ANN BETZNER,)	
)	
Appellant,)	
)	
v.)	CIVIL NO. 3:09cv128
)	
FIRST FEDERAL SAVINGS BANK,)	
)	
Appellee.)	

OPINION AND ORDER

This matter is before the court on a motion for an award of attorney's fees and costs incurred on appeal, filed by the appellee, First Federal Savings Bank ("First Federal"), on July 10, 2009. The appellant, Lisa Ann Betzner ("Betzner"), filed her response on October 6, 2009.

For the following reasons, the motion will be granted.

Discussion

First Federal has filed its motion pursuant to Rule 8020 of the Federal Rules of Bankruptcy Procedure, which provides as follows:

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and a reasonable opportunity to respond, award just damages and single or double costs to the appellee.

A frivolous appeal has been defined as "one prosecuted with no reasonable expectation of altering the . . . court's judgment" Giannopoluos v. Brach & Brock confections, Inc. 109 F.3d 406, 412 (7th Cir. 1997).

In support of its motion, First Federal points out that Betzner framed two issues for appeal, yet failed to even argue the first issue. With respect to the second issue on appeal,

Betzner failed to make any argument that the Bankruptcy Court's findings were clearly erroneous. Rather, Betzner argued that the evidence should have been interpreted differently. Thus, First Federal claims that Betzner asked this court to reverse discretionary decisions and factual findings of the Bankruptcy Court that were supported by the great weight of the evidence and wholly in conformance with applicable law. First Federal correctly notes that such a meritless appeal was held to be frivolous. Rosenberg v. Lincoln American Life Ins. Co., 883 F.2d 1328, 1339-40 (7th Cir. 1989). First Federal concludes that because Betzner failed to present any supportable argument that the Bankruptcy Court's factual findings were clearly erroneous, she had no expectation of prevailing on appeal, rendering her appeal frivolous.

In response to the motion, Betzner merely notes that in this court's order of September 9, 2009, affirming the Bankruptcy Court's opinion, this court did not make any determination that the appeal was frivolous. Clearly, Betzner missed the point that such a determination would be made after Betzner had had the opportunity to file a response. (See DE 24)

As Betzner has failed to respond to First Federal's arguments and, moreover, because First Federal's arguments are well-taken and supported by the record, the court will grant the motion for fees and costs.

Conclusion

Based on the foregoing, First Federal's motion for an award of attorney's fees and costs incurred on appeal [DE 22] is hereby GRANTED.

Entered: November 6, 2009.

s/ William C. Lee
William C. Lee, Judge
United States District Court